

KEITH P. CARPENTER

IBLA 88-438

Decided November 28, 1989

Appeal from a decision of the Idaho Falls District Office, Bureau of Land Management, setting linear rental rate for electric power line right-of-way I-22234.

Affirmed.

1. Appraisals--Rights-of-Way: Generally--Regulations: Generally

A linear right-of-way for an electric power line is subject to administration pursuant to Departmental regulations published at 43 CFR Subpart 2803. A linear rental rate for an electric power line right-of-way was correctly calculated by using a schedule as provided by 43 CFR 2803.1-2(c)(1)(i), even though the rental increased by more than 100 percent over a rental deposit paid, where the amount of increase was phased in pursuant to provision of 43 CFR 2803.1-2(c)(2)(i).

APPEARANCES: L. Wid Disney, Authorized Agent, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Keith P. Carpenter has appealed from a decision of the Idaho Falls District Office, Bureau of Land Management (BLM), issued April 13, 1988, establishing the rental rate for right-of-way I-22234. The right-of-way, issued August 26, 1985, is for an electric power line. The right-of-way granted is 10 feet wide and 5.4 miles long, containing about 6.5 acres, located in Clark County, Idaho.

Although the right-of-way was granted in 1985, a rental rate was not set for the grant until adoption of uniform regulations governing rental rates for linear rights-of-way in 1987. See 52 FR 25811 (July 8, 1987). In the meantime, appellant had paid a \$25 deposit which was to be credited against the rental determined under the new rental schedule. In the decision of April 13, 1988, setting appellant's power line rental rate, BLM determined that rental for the period beginning August 26, 1985, and ending December 31, 1988, was \$286. A \$25 credit was allowed for the deposit paid by appellant in 1985 when the right-of-way was granted.

An appeal was timely taken from this decision, alleging that the rate imposed was too high considering the limited estate granted by the power line right-of-way, and that the amount of increase was unreasonable in a

time of Government austerity. The statement of reasons for appeal did not, however, include evidence tending to show that the rate schedule used by BLM was in error, nor did appellant question that the regulations codified at 43 CFR Subpart 2803 were properly administered. It does not appear that appellant is seeking a hardship exception from rental payment pursuant to 43 CFR 2803.1-2(b)(1)(iv).

[1] Appellant's rental rate was set using a schedule as provided by 43 CFR 2803.1-2(c)(1)(i) through (v). The record of the decision under review establishes that appellant's electric power line right-of-way rental was calculated for Clark County, Idaho, at the rate of \$13.84 for each acre of use on a yearly basis. This charge was not fully imposed for each of the years from 1985 through 1988, but was "phased in by equal increments" as required by 43 CFR 2803.1-2(c)(2)(ii). The resulting rental for the period ending on December 31, 1988, was therefore correctly calculated according to the regulations promulgated for electric power line linear rights-of-way. *Id.*; see also *Tucson Electric Power Co.*, 111 IBLA 69 (1989).

Appellant has not directly challenged these regulations, nor has he questioned whether BLM complied with the regulatory plan for setting rental rates for linear rights-of-way. An appellant challenging a BLM decision bears the burden of showing by a preponderance of evidence that the decision appealed from is in error. *Bender v. Clark*, 744 F.2d 1424 (10th Cir. 1984); *Carolyn J. McCutchin*, 99 IBLA 29 (1987). On the record before us, the decision issued by BLM on April 17, 1988, setting appellant's rental rate is shown to have been made in compliance with, and conformity to, Departmental regulations. Appellant has not shown how the decision appealed from is in error, nor has he challenged the application by BLM of applicable Departmental regulations. The allegation that there is error in the result reached by BLM is not enough, by itself, to establish that the decision is incorrect or that a different result should have been reached. (For a case where a showing was made that there had been irregularity in the administration of Departmental regulations, see *Leon F. Scully, Jr.*, 104 IBLA 367 (1988)).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decision is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge